

IN THE UNITED STATES BANKRUPTCY COURT FOR THE
WESTERN DISTRICT OF MISSOURI

In re:)	BANKRUPTCY CASE
)	NO. 20-50218-btf-13
BRIAN MICHAEL BERNARD)	
)	
AND)	
)	
JENNIFER ANN BERNARD)	
)	ADVERSARY CASE NO.
Debtor(s))	
)	
)	
RICHARD V. FINK, STANDING)	
CHAPTER 13 TRUSTEE,)	
Plaintiff)	
)	
vs.)	
)	
CARVANA LLC)	
1930 W. RIO SALADO PKWY)	
TEMPE, AZ 85281)	
)	
CARVANA LLC)	
PO BOX 29018)	
PHOENIX, AZ 85038)	
)	
CARVANA LLC)	
PO BOX 29002)	
PHOENIX, AZ 85038)	
)	
CARVANA LLC)	
c/o CSC-LAWYERS INCORPORATING)	
SERVICE COMPANY)	
221 BOLIVAR ST.)	
JEFFERSON CITY, MO 65101)	
)	
Defendant(s).)	

**COMPLAINT TO AVOID AN UNPERFECTED INTEREST IN PERSONAL
PROPERTY**

COMES NOW, Plaintiff, Richard V. Fink, the Standing Chapter 13 Trustee for the Western District of Missouri ("Plaintiff") by and through his counsel, and for his Complaint to Avoid an Unperfected Interest in Personal Property against Carvana LLC ("Defendant") states as follows:

- 1) Richard V. Fink is the duly qualified and acting trustee in the above referenced case.
- 2) This Court has jurisdiction over this adversary proceeding pursuant to 28 U.S.C. §§1334 and 157.
- 3) This is a statutorily and constitutionally core proceeding within the meaning of 28 U.S.C. § 157(b)(2). Venue properly lies in this judicial district pursuant to 28 U.S.C. §1409(a), in that the instant adversary proceeding is related to the above-captioned case under title 11 of the United States which is still pending.
- 4) Plaintiff brings this proceeding to avoid an unperfected interest in personal property pursuant to 11 U.S.C. §544.
- 5) On June 21, 2020, Brian Michael Bernard and Jennifer Ann Bernard (“Debtors”) filed for relief under Chapter 13 of Title 11 of the United States Bankruptcy Code.
- 6) Debtors are individuals who reside at 3809 Churchill Court, St. Joseph, Missouri.
- 7) Defendant is the entity that financed Debtors’ purchase of a 2018 Nissan Altima.
- 8) Defendant filed claim 19 on August 28, 2020 in the amount of \$14,667.31. The claim is listed as secured by a 2018 Nissan Altima with VIN 1N4AL3AP8JC118621. Pursuant to the proof of claim, the noticing address is Carvana, LLC PO Box 29018, Phoenix, AZ 86038.
- 9) Pursuant to the proposed plan and filed proof of claim (and prior to becoming aware of an issue with the perfection of the security interest), the trustee disbursed adequate protection payments to Defendant in the amount of \$920.61.
- 10) On or around March 21, 2020, Debtors purchased a 2018 Nissan Altima with VIN 1N4AL3AP8JC118621 (“Vehicle”).
- 11) According to information obtained from the Missouri Department of Revenue, the title was issued on September 2, 2020.
- 12) According to information obtained from the Missouri Department of Revenue, Defendant has not filed a Notice of Lien regarding the Vehicle.
- 13) As of the petition filing date of June 21, 2020, Defendant’s security interest in the Vehicle was not perfected.
- 14) As Defendant’s security interest was not perfected as of the petition date in accordance with applicable law, it is not enforceable against third parties, including the Trustee, pursuant to 11 U.S.C. §544.
- 15) The Trustee may avoid the unperfected security interest held by Defendant.

WHEREFORE Plaintiff prays for judgment as follows:

- 1) An order avoiding the aforesaid unperfected security interest; and
- 2) An order allowing the trustee to treat Defendant's claim 19 as a secured claim in the amount of \$920.61 (the adequate protection payments previously disbursed) with the remainder allowed as a non-priority unsecured claim; and
- 3) An order preserving the property for the benefit of the bankruptcy estate as provided in 11 U.S.C. §550 and/or §551.
- 4) For such other and further relief as the Court may deem just and proper.

Respectfully submitted,

/s/ Dana M. Estes

Dana M. Estes, #47540

Office of the Chapter 13 Trustee for the
Western District of Missouri

Richard V. Fink, Trustee

2345 Grand Blvd., Ste. 1200

Kansas City, Mo. 64108-2663

Dated: November 9, 2020